

**MINUTE ENTRY  
FALLON, J.  
December 2, 2002**

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1355**  
: **PRODUCTS LIABILITY LITIGATION** : **SECTION "L"**  
: **JUDGE FALLON**  
..... :

**THIS DOCUMENT RELATES TO ALL CASES:**

A pretrial status conference was held November 25, 2002 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Roy Amedee, James Capretz, Stephen Murray, Julie Jacobs, Albert J. Rebennack, Daniel E. Becnel, Jr., J. Bradley Duhe, Dawn Barrios, Blaine Barrileaux, Fred S. Longer, and R. Larry Morris. In attendance for the Defendants were James Irwin, Thomas Campion, Monique Garsaud, Chales F. Preuss, and Thomas J. Cortazzo. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 19 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Defense Liaison Counsel ("DLC") informed the Court that as of November 20, 2002, approximately 7.21 million pages of documents, including hard copy documents and e-mails with attachments, have been produced. DLC advised the Court that they hoped to have electronic

production finished by the end of January, 2003. The Court instructed PLC to advise the Court if there were further complications in reaching this goal.

2. State Liaison Counsel

The State Liaison Committee ("SLC") informed the Court that it has distributed a newsletter for all state attorneys detailing the progress of the MDL. PLC advised the Court that it was working with the SLC to determine if they wished to mediate their cases with the court-appointed mediator.

PLC informed the Court that state counsel from other states were considering withdrawing from the federal-state cooperation. The Court advised SLC and PLC to contact those counsel and advise them to discuss their plans with the Court before filing any motions to withdraw.

3. Plaintiff Profile Forms and Authorizations

As of October 4, 2002, Defendants had received 1,473 Patient Profile Forms ("PPFs"), 156 are currently overdue, and 2 PPFs will become due within thirty (30) days. DLC advised the Court that they will work with the PLC to contact counsel whose clients' PPFs are overdue. DLC plans to bring a final motion in this matter by the end of February, 2003.

4. Subpoena to FDA

PLC advised the Court that the FDA had fully complied with the subpoena and that this item may now be removed from the agenda.

5. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

6. Ongoing Studies/Subpoena to BevGlen

The parties had nothing to report on this issue.

7. Third Part Subpoena Duces Tecum Issued by Defendants

PLC reported that it had received the certifications of Dr. Herron and SmithKline Beecham. PLC further indicated that it had received the Covance certification on November 21, 2002 and was reviewing it. PLC expects to report on its satisfaction with the certification in the next several days.

8. Motion for Class Certification

In an Order dated June 27, 2002, this Court indicated that it would in due course set a hearing date in connection with the PSC's second motion for class certification [MDL Document No. 619]. At the status conference both DLC and PLC recommended to the Court that the hearing on the motion not be scheduled until after all electronic discovery is received and reviewed by the PSC. Accordingly, the Court will again DEFER setting a hearing date on this motion. Liaison Counsel should continue to make recommendations as to a future hearing date at each monthly status conference.

9. Plaintiffs' and Defendants' Respective Requests for Production of Documents

PLC informed the Court that they are awaiting a response on its "Merits" Request for Production of Documents and Interrogatories served on the DLC on October 9, 2002. DLC advised the Court that it will have responses ready within two weeks. Accordingly, IT IS ORDERED that DLC SHALL provide responses to the PLC's "Merits" Request for Production of Documents and Interrogatories within two weeks of the date of this Minute Entry.

10. Shell/Morganroth Study

On October 19, 2001, the Defendants served a subpoena duces tecum on Dr. William Shell, individually and through his Foundation, for documents relating to the Shell Study. DLC asked PLC for

a certification from Dr. Shell,, and are awaiting receipt of it. DLC asked the Court to set a deadline for receipt of the certification. Accordingly, IT IS ORDERED that Dr. William Shell SHALL provide his certification to the DLC within 10 days of the date of this Minute Entry. The Court indicated that it would prohibit Dr. Shell's testimony in any trials in this matter if he fails to comply with this order. PLC advised the Court that it would pass this information along to Dr. Shell.

11. Rule 30(b)(6) Deposition of Defendants Regarding Studies

The parties have agreed on the matters that will form the basis of the request for the 30(b)(6) deposition. Defendants have hired a third-party to assist them in preparation of a database to comply with plaintiffs' discovery requests. DLC reported that these efforts are underway. PLC requested that the information be provided by the end of the year. The Court instructed DLC to inform the third party that the information would be needed no later than December 31, 2002. The Court further advised that if this were impracticable, the third party should contact the Court and advise it of its reasons.

12. Trust Account

PLC advised the Court that the PLC has spoken with the Clerk of Court for the Eastern District of Louisiana, as well as her Chief Deputy Clerk, and the Financial Administrator for the Court to discuss a method by which the funds may be placed in the Registry of the Court. PLC further advised that it should have a draft order to the clerk by the end of the week.

The Court further advised the parties that they should consider placing any settlement funds from those cases that have been successfully mediated into the Registry of the Court pending finalization of the settlement papers in the individual cases.

13. Declassified Documents

PLC indicated its intent that the state cases move forward. DLC advised the Court that following the Court's orders during the October 15, 2002 hearing on declassification it has prepared a list of exhibits and documents to which DLC no longer objects.

14. Mediation

PLC and DLC advise the Court that they were in contact with court-appointed mediator, Mr. Patrick Juneau regarding the scheduling of dates and cases for mediation. The Court advised the parties to focus on those cases all parties agreed were ready for mediation and to move the process forward.

15. Trial of Louisiana Cases

The Court heard oral arguments on the Plaintiffs' Motion to Continue the trial dates set in this matter for January 6 - 10, 2003, January 13 -17, 2003, and January 21-24, 2003. Thereafter, this Court, in a Minute Entry dated November 25, 2002 GRANTED the Plaintiffs' Motion to Continue. The new dates are set out in the November 25, 2002 Minute Entry. The Court will issue a subsequent Minute Entry when the exact schedule of cases and hearings is known.

16. Verilaw

PLC and DLC advised the Court that Verilaw wishes to modify its pricing schedule. Counsel plan meetings with Verilaw representatives to discuss this issue.

17. Pharmacy Indemnity Agreements

DLC advised the Court that it has forwarded two additional indemnity agreements as to non-Louisiana pharmacies.

16. Miscellaneous Topics

The Court advised the parties that it hoped to conclude discovery in this matter by the end of next year. To that end, the Court asked PLC and DLC to appoint counsel to begin focusing on the conclusion of discovery in this matter as well as a plan for where the litigation will proceed at that point.

16. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Tuesday, January 28, 2003 at 9:00 a.m.